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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/063,958	05/29/2002	Akira Koseki	JP920010018US1	2376
47049	7590	09/11/2006	EXAMINER	
FERENCE & ASSOCIATES 409 BROAD STREET PITTSBURGH, PA 15143			KENDALL, CHUCK O	
		ART UNIT	PAPER NUMBER	2192

DATE MAILED: 09/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/063,958	KOSEKI ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Chuck O. Kendall	2192	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 17 January 2006.
- 2a) This action is **FINAL**.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) 1-7, 11 and 15-17 is/are allowed.
- 6) Claim(s) 8-10 and 12 - 14 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____ .
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____ .	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____ .

***DETAILED ACTION***

1. This action is in response to the application filed 05/30/2006.
2. Claims 1 – 17 were previously presented. Claims 3 and 5 have been amended and claims 1 – 17 are still pending.

***Response to Amendment***

3. Examiner has withdrawn the 112, 2<sup>nd</sup> paragraph rejection (regarding lack of antecedent basis) in the non-final rejection of 06/23/05 regarding claims 5, 7 and 11, and also withdraws the previous non-final rejection of 06/23/2005 as well.

***Claim Rejections - 35 USC § 101***

4. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

The claimed invention is directed to non-statutory subject matter.

5. Regarding claims 8 – 10, and 12 – 14 the claimed invention is directed to non-statutory subject matter. As disclosed in the Interim Guidelines for Examination of Patent Applications for Patent Subject Matter eligibility, Annex IV (a) it is discloses that:

“ Data structures not claimed as embodied in computer-readable media are descriptive material per se and are not statutory because they are not capable of causing functional

change in the computer. See, e.g., Warmerdam, 33 F.3d at 1361, 31 USPQ2d at 1760 (claim to a data structure per se held nonstatutory). Such claimed data structures do not define any structural and functional interrelationships between the data structure and other claimed aspects of the invention which permit the data structure's functionality to be realized"

And further states that:

" ...similarly computer programs claimed as computer listings per se, i.e., the descriptions or expressions of the programs, are not physical "things." They are neither computer components nor statutory processes, as they are not "acts" being performed. Such claimed computer programs do not define any structural and functional interrelationships between the computer program and other claimed elements of a computer which permit the computer program's functionality to be realized" .

In the claims 8 – 10 and claims 12 – 14, Applicant's claims calls for a compiler and a software program. As identified above software or programs per se are not statutory subject matter.

### ***Allowable Subject matter***

6. Claims 1 – 7, 11 and 15 – 17 are allowed. The limitations are not taught or explicitly disclose in the prior art of record.

"...performing mapping between said logical registers and physical registers so that said physical registers that are live at a procedure in said program to be compiled are allocated from the bottom of the register stack..."

"...upon the calling of the procedure, so long as there is a vacancy in operation resources, copying said registers residing in the register stack, to free registers located at the bottom of said register stack".

"...when a different procedure is called in a predetermined procedure, said predetermined procedure called before the different procedure, reallocating registers that are allocated for the execution of said predetermined procedure and are live when said different procedure is called, and calling said different procedure; and upon the return from said different procedure, restoring the register image to the state immediately before the reallocation".

### ***Response to Arguments***

7. Applicant's arguments, see pages 10 -12, filed 05/30/06, with respect to the rejection(s) of claim(s) 1 – 7, 11 and 15 – 17 under 35 USC 102(b) have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However as per claims 8 – 10 and 12 – 14, Applicant's arguments are not persuasive and the 101 rejections are still being maintained. Please see a more detailed response above in the 101 rejection section.

### **Correspondence information**

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Chuck Kendall whose telephone number is 571-272-3698. The examiner can normally be reached on 10:00 am - 6:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tuan Dam can be reached on 571-272-3695. The fax phone number for the organization where this application or proceeding is assigned is **571-273-8300**.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Ck.



TUAN DAM  
SUPERVISORY PATENT EXAMINER